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way is in the abutting owner the public acquires only an easement for the purposes usually pertaining to a highway and can use only such part of the property as is reasonably necessary to carry out such purposes. *Robert v. Sadler*, 104 N. Y. 229; *City of Aurora v. Fox*, 78 Ind. 1, 9. It follows that in such case the ownership of any material below the surface must remain in the abutting owner. *Higgins v. Reynolds et al.*, 31 N. Y. 151; *City of Delphi v. Evans*, 36 Ind. 90; *Cuming v. Prang*, 24 Mich. 522; *Rich v. City of Minneapolis*, 37 Minn. 423; and such owner may make any use of his property which is consistent with the servitude or easement of a way over it. 3 KENT COM. 433; DILLON MUN. CORP. (4th ed.), § 656 b; *Allen v. Boston*, 159 Mass. 324. Such use must, however, be necessary and reasonable and for a temporary purpose only. *Clark v. Fry*, 8 Ohio St., 358, 375; *Callahan v. Gilman*, 107 N. Y. 360; *Mallory v. Griffey*, 85 Pa. St. 275; *Raymond v. Keserberg*, 84 Wis. 302. The principles on which the court bases its reasoning in the principal case are no doubt well founded, but in its application of those principles to the facts in the case the court goes to an extreme scarcely warranted by the decisions which have established the principles applicable to cases of this kind.

HUSBAND AND WIFE—CONTRACTS—EFFECTS OF STATUTE OF LIMITATIONS.—A wife loaned her husband money from her separate estate and took his notes therefor. The husband died more than ten years after the notes were given. His widow was appointed administratrix of his estate and filed the notes as a claim against the estate. A special administrator was appointed who reported in favor of the allowance of the claim. This was objected to by the heirs on the ground that the notes were barred by the statute of limitations. *Held*, that under the statute the wife might sue the husband to recover her separate estate and that in as much as married women were not excepted from the operation of the statute of limitations, it ran against them the same as other persons. *In re Deaner's Estate* (1905), — Ia. —, 102 N. W. Rep. 825.

By statute in several jurisdictions husband and wife are enabled, subject to certain restrictions, to make contracts generally with each other which will be enforced at law. *Rice, Stix & Co. v. Sally*, 176 Mo. 107; *Bea v. The People*, 101 Ill. App. 132; *McDougall v. McDougall*, 135 Cal. 317. But in some states it has been held that the common law disability of a married woman to contract with her husband has not been abrogated by statutes enabling her to contract generally. *Whitney v. Closson*, 138 Mass. 49; *Hendricks v. Isaacs*, 117 N. Y. 411. In other states the common law has been relaxed only so far as to enable the wife to manage and enjoy her separate business or estate. *Keddy v. Petty*, 153 Ind. 179; *Naylor v. Nincock*, 96 Mich. 182. An interesting question has arisen under this legislation in states where married women are not expressly excepted from the operation of the statute of limitations as to whether the statute runs against a married woman's claim against her husband during coverture. The authorities are not in harmony on this point. In some jurisdictions it is held on grounds of public policy which discourages controversies between husband and wife that the statute will not run during coverture. *Alpaugh v. Wilson*, 52 N. J. Eq. 424; *Barnett v. Harshberger*, 105

Ind. 410; *Beloit Second National Bank v. Merrill*, 81 Wis. 151. In other states it is held as in the principal case that the statute will run from the time the right of action accrues. *Sabel v. Slingsluff*, 52 Md. 132; *Muus v. Muus*, 29 Minn. 115.

INSURANCE—MUTUAL BENEFIT SOCIETIES—BENEFICIARIES.—A by-law of a mutual benefit association limited the beneficiaries to relations and dependants of the insured, though the statute under which the society was organized allowed others to be insured as beneficiaries. A became a member and took out a benefit certificate in favor of B, "or such person or persons as the rules and regulations of said association shall determine." B was neither a relation nor a dependant of A, this fact being well known to the company. On the death of A, his only surviving brother and sisters brought suit, as his nearest relatives, to recover the amount of the benefit certificate. B likewise sued for the amount, and, the association having paid the money into court, the claimants interpleaded. *Held*, (two of the judges dissenting) that B was entitled to recover. *Coulson et al. v. Flynn et al.* (1905), — N. Y. —, 73 N. E. Rep. 507.

Though in this case the statute was broader than the by-laws as to classes of beneficiaries allowed, still as the by-laws as well as the statute must be read into the contract and the primary object of these associations taken into consideration, it would seem that the dissenting opinion is better supported by reason and authority than that of the majority. The holding in the present case seems to be in accord with those cases that hold that where the beneficiary named is outside the class provided for by the constitution of the association, no one but the association can raise the question, and it may waive its right. *Morrison v. Mutual Life Insurance Co.*, 59 Wis. 162; *Davidson v. Mutual Benefit Society*, 39 Minn. 303; *Johnson v. Knights of Honor*, 53 Ark. 255; *Knights of Honor v. Wattson*, 64 N. H. 517; *Luhrs v. Supreme Lodge etc.*, 7 N. Y. Supp. 487. In the last case cited, however, the beneficiary, while not the legal wife of the assured yet supposed she was, and had lived with him as such up to the time of his death. But the better opinion seems to be that where the person designated as beneficiary is not within any of the statutory classes, no waiver by the company will be effective, and the fund will go to the person or persons of the class first entitled. *American Legion of Honor v. Perry*, 140 Mass. 580; *Shea v. Mutual Benefit Association*, 160 Mass. 289; *Palmer v. Welch*, 132 Ill. 141; *Alexander v. Parker*, 144 Ill. 355; *Britton v. Royal Arcanum*, 46 N. J. Eq. 102; *Mutual Benefit Association v. Rolfe*, 76 Mich. 146; *Di Messiah v. Gern*, 10 Misc. Rep. (N. Y.) 30. See also, *Ledebohr v. Wis. Trust Co.*, 112 Wis. 657; MAY ON INSURANCE, Vol. II, 399 F; AM. & ENG. ENC. OF LAW, III, pp. 959-61, 1083, 19 Am. St. Rep., note p. 786; BACON BEN. SOC. I, § 244.

LIFE INSURANCE—DISTRIBUTION OF SURPLUS—CONSTRUCTION OF STATUTE.—The statutes of Wisconsin provided that "every life insurance company doing business in this state on the principle of mutual insurance, or the members of which are entitled to share in the surplus funds thereof may make distribution of such surplus as they have cumulated annually or once in two, three,